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Site Plan Control

An Explanation of Section 35a of the Planning Act

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Ministry of
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INTRODUCTION

This publication is intended to provide an explanation of the revised section 35a of The Planning Act. This explanation is an expansion on the "special bulletin" prepared by this ministry when the Act was amended on June 22, 1979. (See Appendix A).



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SITE PLAN CONTROL - SECTION 35a OF THE PLANNING ACT

1.0 PURPOSE AND BACKGROUND

The intent of site plan control, as provided for in section 35a of The Planning Act, is to enable municipalities to exercise site specific controls over development proposals additional to the general requirements authorized by section 35 of The Planning Act.

Section 35a controls were previously applied through a by-law passed under section 35 of The Planning Act, and most municipalities simply repeated the legislation in their own by-law.

Section 35a of The Planning Act was amended in June 1979, after the Supreme Court of Canada declared the City of Toronto's site plan control by-law invalid. The court held that a by-law which merely repeated what the enabling legislation empowered the city to do by by-law was improper. It was said to be incumbent upon the municipality, under the legislation, to identify specific standards in respect to each of the areas of site plan control it was seeking to regulate. This decision brought into question the legality of similar by-laws enacted by many other municipalities.

As the province considered it impractical for municipalities to predetermine the level of detail required by the court in a by-law, the legislation was amended. Section 35a site plan controls have been removed from the regulatory controls of section 35 and a municipality can now enact such controls directly, without Ontario Municipal Board approval.

2.0 WHO QUALIFIES FOR THE CONTROL

Municipalities with approved official plans may enact by-laws under section 35a of The Planning Act (and not section 35) to designate areas for site plan control. An area which is not covered by an approved official plan may not be designated for site plan control.

3.0 WHO SHOULD USE SITE PLAN CONTROL

It is not expected that every municipality that qualifies would use site plan control. In areas where the majority of development is carried out by severances or detailed plans of subdivision, this type of control may not be required. In certain cases, however, municipalities may wish to utilize this control on certain specific developments (i.e., commercial uses in a downtown area where a redevelopment scheme is in effect, shopping centre developments etc.). Access to architectural advice is highly desirable, particularly with respect to complex or large scale developments.

Since the implementation of site plan control requires administrative and technical expertise, it is important for a municipality to consider whether they have the resources to operate a site plan control system before enacting a 35a by-law.

4.0 WHAT SITE PLAN CONTROL OFFERS

4.1 Definition of Development

Development is defined in the Act as "the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of substantially increasing the size and usability thereof, or the laying out and establishment of a commercial parking lot".

Site plan control may be applied to most categories of development or redevelopment of buildings or structures (i.e., industrial, commercial, residential and institutional). It would not apply, however, to some forms of development such as sand and gravel pits. As mentioned earlier, it is not usually, but may be applied to subdivision applications (subject to section 33 of The Planning Act). Similarly, developments within the Niagara Escarpment Planning Area which are subject to development control are generally excluded. Site plan

control can, however, be utilized in the latter cases for maintenance of those facilities that are permitted by the legislation, on sites approved by the Niagara Escarpment Commission.

The term "substantially" permits the municipality to utilize its discretion and does not unduly restrict the municipality when applying this control. We suggest that each application be dealt with on its individual merits.

4.2 Matters over which section 35a Control may be Exercised

Plans and Drawings

Once a by-law is passed designating an area for site plan control, development cannot take place unless the municipality has approved plans and/or drawings showing:

- (a) the location of proposed buildings and structures;
- (b) the location of all facilities and works related to the proposed buildings and structures; and
- (c) all of the facilities required by the municipality outlined in subsection 35a(6)(a).

Subsection 6* of the Act outlines those matters which the owner may be required to provide to the municipality's satisfaction as a condition of plan and/or drawing approval. These items specifically relate to the site. Although there may be some facilities and work proposed on a site that are not outlined in subsection 6 and cannot be the subject of conditions of approval to plans, a municipality may require that these be shown on the plans. This enables the municipality to obtain full and complete information regarding a proposal.

*Two typographical errors in the legislation should be noted:

- (i) Section 35a(4): the reference to subsection 10 should be a reference to subsection 9.
- (ii) Section 35a(4)(1): the reference to subsection 7 should be a reference to subsection 6.

For certain land uses such as industrial, commercial and residential buildings containing 25 or more units, drawings showing plan, elevation and cross-section views may be required by the municipality in addition to the plans mentioned in the previous section. These drawings are required to show only matters related to:

- (a) massing and conceptual design of proposed buildings;
- (b) relationship of the proposed buildings to the adjacent buildings, streets and exterior areas to which there is public access; and
- (c) interior walkways, stairs and escalators to be used by the public.

The drawings and plans may only be required to indicate general exterior design features and landscaping. The elevations and cross-sections should indicate the location of special facilities (such as underground parking garages).

4.3 Limitation of the Legislation

. Design Details

Elevation and cross-section views cannot be required for such lower density uses such as single-family dwellings, duplexes, etc., that do not generally have a significant impact on the streetscape.

Interior areas (other than walkways, stairs and escalators), colour, texture, type of materials, window detail, construction, architectural and interior design detail are specifically excluded. The responsibility for the aesthetics of a site (i.e., matters related to design) are left to the applicant thereby reducing subjective judgements on these matters. This will also eliminate arguments before the Ontario Municipal Board relating to aesthetics.

Height and Density

Section 35a(5) specifically excludes the municipality from limiting the height and density of buildings through site plan control. Matters of height and density are regulated through zoning by-laws passed pursuant to section 35 of The Planning Act. It is not appropriate to regulate these matters in a by-law that is meant to be a supplementary measure to be used in conjunction with and not as a replacement for zoning.

5.0 PROCEEDING UNDER THE LEGISLATION

5.1 The By-law

A site plan control by-law passed under section 35a of The Planning Act is a separate by-law and is not a zoning by-law passed pursuant to section 35 of The Planning Act. This by-law does not require Ontario Municipal Board approval.

Designating Areas

Site plan control areas may be identified in a by-law in a number of ways:

(a) by reference to a geographic area:

(provided there is official plan coverage for the area) a specific site may be described by a metes and bounds description or by reference to a registered plan of subdivision. Reference may also be made to the entire corporate limits of a municipality or parts of the municipality may be identified, i.e., a neighbourhood or downtown area;

(b) by reference to an attached schedule:

a map with sufficient detail to identify the area subject to control may be attached similar to those attached to by-laws and/or official plans; and

(c) by reference to one or more land use categories contained in a zoning by-law:

the area subject to control may correspond to the zones of a municipality's by-law. For example, reference may be made to C1, C2....(commercial) zones.

Any combination of these methods may be used. It is important to note that whatever method is employed, the by-law should clearly identify the area, areas and/or zones to which it applies.

Exemptions

Certain types or classes of development e.g., single family dwellings, minor additions, some accessory uses etc., may be exempted from site plan approval by the municipal council. These uses should be identified by name (i.e., accessory uses) or by reference to a zoning by-law classification (i.e., R1 zone) in the designating by-law.

There is no provision in the legislation for waiving or exempting applications which do not require approval unless these uses have been specified in the by-law. If council feels that a specific type or class of development should not be subject to control and was not specifically identified in the original by-law, it must be amended to exempt the proposed use.

The definition of these exempted classes of development may not be delegated by council.

Delegation of Approval Authority

Council may delegate its powers under section 35a in the designating by-law to either a committee of council* or an appointed officer. The name or position occupied by the appointed officer should be identified in the by-law. Council may wish to split its approval authority between an appointed officer and a committee of council. If they wish, council may appoint an officer to deal with applications for minor developments and a committee of council for applications dealing with larger developments (e.g. large commercial).

*A committee of council must be composed entirely of council members.

5.2 The Agreement

As a condition of approval, the municipality may require the owner to enter into an agreement dealing with facilities, works and their maintenance or with the approval of plans and drawings.

This agreement should be registered against the land to which it applies, in order to provide legal recourse

to a municipality in case of default through section 469 of The Municipal Act.*

The by-law itself should not contain actual details of the development. These should be addressed in the agreement. The agreement need not deal with all matters listed in subsections 4 and 6 of section 35a. Only those matters pertaining directly to the individual proposal or to the plans and drawings related to an individual proposal should be included.

Provision may be included to require the owner to maintain at his sole risk and expense and to the satisfaction of the municipality all facilities and works subject to control.

*Section 469 of The Municipal Act provides authority for a municipality to direct that the default of any matter may be performed by the municipality, the cost of which can be recovered by municipal taxes or annual installments.

6.0 MUNICIPAL ADMINISTRATION

In order to speed up the processing of development applications which may involve the submission of site plans or the entering into of an agreement, it would be to the advantage of both the developer and the municipality to discuss, at the earliest possible opportunity, the details of development as envisaged by both parties.

Quite often a municipality is not aware of a developer's intentions until an application for a building permit is submitted. Conversely, a developer may not be aware of any municipal requirements in addition to the general standards set out in zoning and other municipal by-laws. Unless negotiations take place at an early stage with the objective of resolving differences which may arise, considerable expense could be incurred to both the developer and the municipality when an application is delayed during the approval stages - especially if the application is referred to the Ontario Municipal Board for resolution.

If it is not already doing so, a municipality should encourage prospective developers to contact municipal staff before a development proposal reaches an advanced stage of preparation. To assist developers, municipalities could publish general guidelines setting out minimum municipal requirements for various types of development (for example, the standards and locational requirements for fire routes to apartment buildings).

A municipality may also wish to prepare development concepts to indicate to a prospective developer the conceptual manner in which it would prefer that a particular site or sites should be developed, showing, for example, the approximate location of parking and landscaping areas. Such development concepts will enable the municipality to achieve planning objectives which cannot always be provided for a general zoning by-law.

7.0 APPEALS

In determining the extent to which a municipality exercises its powers under the provisions outlined in subsections 4 and 6, it must keep in mind that the owner of the land can appeal to the Ontario Municipal Board if he is not satisfied with any of the terms, conditions or proposed changes required by the municipality. A municipality must therefore be prepared to defend its requirements before the board.

The Act also provides that the owner may appeal to the Ontario Municipal Board if the municipality fails to approve plans or drawings within thirty days after they are submitted to the municipality for approval.

Matters that can be appealed

The following are matters that can be appealed by the owner of the land:

- (a) any requirements or part thereof made by the municipality as a condition of approval
- (b) any terms of any agreement required by the municipality
- (c) the plans or drawings or any part thereof.

Written notice must be forwarded to the secretary of the Ontario Municipal Board and to the clerk of the municipality requesting that the matter be heard.

8.0 PREVIOUS AGREEMENTS AND BY-LAWS

Although the revised legislation is not retroactive, it does provide for the continued validity of agreements previously entered into to the extent that those agreements were consistent with the former section 35a.

9.0 ADDITIONAL INFORMATION

For additional information or assistance contact:

9.1 PLANS ADMINISTRATION DIVISION

Community Planning Review Branch (Central and Southwest)

Community Planning Review Branch (North and East)

7th and 8th Floors, 56 Wellesley Street West
Toronto, Ontario M7A 2K4
(416) 965-6418

Operations Control Branch

7th Floor, 56 Wellesley Street West
Toronto, Ontario M7A 2K4
(416) 965-6418

9.2 COMMUNITY PLANNING ADVISORY BRANCH

South West Region
7th Floor
495 Richmond Street
London, Ontario N6A 5A9
(519) 673-1611

South East Region
3rd Floor
244 Rideau Street
Ottawa, Ontario K1N 5Y3
(613) 566-3801

North West Region
435 James Street South
Thunder Bay, Ontario P7C 5G6
(807) 475-1651

North East Region
1191 Lansing Avenue
Sudbury, Ontario P3A 4C4
(705) 560-0120

Central Region
2nd Floor
47 Sheppard Avenue East
Willowdale, Ontario M2N 2Z8
(416) 224-7635

SPECIAL BULLETIN



Ontario
Ministry of
Housing

Planning Act Amendment: June 22, 1979

Section 35a, Site Plan Control

This bulletin explains the changes recently made to section 35a. The changes contained in Bill 96 became effective June 22, 1979.

It was considered appropriate to revise the section as a result of a decision handed down by the Supreme Court of Canada in January, 1979, declaring ultra vires the City of Toronto's development control bylaw. This decision not only made invalid the City of Toronto bylaw, but also brought into question the legality of bylaws enacted by many other municipalities which were drafted in a manner similar to the City of Toronto bylaw.

Effect of Amendments

The main changes relate to the manner in which municipalities can exercise site plan control powers.

Under the new provisions, a municipality can apply site plan controls directly without the necessity of securing Ontario Municipal Board approval rather than in a zoning bylaw as was previously the case. Municipalities are authorized to enact bylaws designating site plan control areas, and once an area has been so designated, no development of land within the area can take place unless the council of the municipality has approved such plans and drawings as may be required under subsection 4.

Other specific changes include:

- The old definition of "redevelopment" has been replaced in subsection 1 by a new definition of "development," which includes development that takes place as a result of redevelopment activities.
- Subsection 3 allows a municipality to designate a site plan control area by referring to land use designations contained in a zoning bylaw, as for example, by referring to areas zoned commercial or industrial.
- The previous provision which allowed municipalities to require the submission of perspective drawings and plans showing building elevations and cross sections of industrial

and commercial buildings and residential buildings containing 25 or more dwelling units has been amended to limit the drawings to showing only matters relating to the massing and conceptual design of the proposed building, its relationship to adjacent buildings and streets, and the provisions of public interior walkways and access ways. Matters relating to architectural details, such as the color, texture and type of materials, window detail, etc., are specifically excluded.

- Subsection 6 sets out a list of matters which a municipality may require as a condition of approving the plans and drawings required under subsection 4. These items are essentially the same as the items listed in the previous section 35a. A few minor changes have been made to the wording to clarify the intent of the provisions.
- Two new provisions have been added to subsection 10. The first allows a council of a municipality, by bylaw, to define any class or classes of development, such as low density residential or senior citizens housing, that may be undertaken without the approval of site plans.
The second allows a municipality, once it has passed a bylaw designating a site plan control area, to delegate by bylaw any of its authority for administration of the controls to a committee of council or an appointed municipal officer.
- The old section 35a is deemed to continue in force in respect of previously passed bylaws so that municipalities that have validly enacted bylaws will be able to carry on under such bylaws in respect of developments to which they apply.
- All agreements entered into under section 35a before the new provisions came into force have been validated to the extent that the agreements deal with facilities and matters mentioned in subsection 2 of the old section 35a provisions.
- The other provisions of the old section 35a providing for the entering into of agreements, the registration of such agreements against the land and appeals to the Ontario Municipal Board remain basically unchanged in the new provisions.

Additional copies of Bill 96 can be obtained from the Ontario Government Bookstore at a cost of 15 cents.

